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APPENDIX

IN THE

Supreme Court of the United States

October Term, 1968

No. 492

CLARENCE BRANDENBURG,

Appellant,

v.

STATE OF OHIO,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF OHIO

FILED SEPTEMBER 9, 1968
JURISDICTION NOTED NOVEMBER 18, 1968

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Relevant Docket Entries

Court of Common Pleas

Sep. 28, 1964	Min. 843 Plea of not guilty entered—Bond $1,000.00
Jan. 19, 1965	Motion to Quash filed
Dec. 5, 1966	Guilty as charged in the Indictment
Dec. 8, 1966	Motion for New Trial Filed
Jan. 5, 1967	Image 36 Sentence—Ohio Penitentiary 1-10 years, Fine $1,000.00 and costs. Defendant released on Same Bond Pending Appeal.
Jan. 13, 1967	Image 88 Entry overruling Motion for New Trial
Jan. 14, 1967	Notice of Appeal Filed—CA 10147
Jan. 14, 1967	Precipe for Docket and Journal entries Filed

Court of Appeals

Feb. 16, 1968	Minute #39—Judgment affirming judgment of Common Pleas Court and mandate to Common Pleas Court.

The Supreme Court of Ohio

Mar. 4, 1968	Notice of Appeal filed
May 9, 1968	Hearing on Motion for Leave to Appeal
Jun. 12, 1968	Motion for Leave to Appeal, Overruled J. 48-672
Jun. 12, 1968	Dismissed, Sua Sponte, No Substantial Constitutional Question Involved. J. 48-678

Indictment

THE STATE OF OHIO,
HAMILTON COUNTY

THE COURT OF COMMON PLEAS OF HAMILTON COUNTY: Term of July in the year nineteen hundred and sixty four.

HAMILTON COUNTY, ss.

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths present that Clarence Brandenberg on or about the twenty eighth day of June in the year nineteeen hundred and sixty four at the County of Hamilton and State of Ohio, aforesaid, did unlawfully by word of mouth advocate the necessity, or propriety of crime, violence, or unlawful methods of terrorism as a means of accomplishing political reform, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

SECOND COUNT

And the Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio upon their oaths do further present that Clarence Brandenberg on or about the twenty eighth day of June in the year nineteen hundred and sixty four at the County of Hamilton and State of Ohio, aforesaid did unlawfully voluntarily assemble with a group or assemblage of persons formed to advocate the doctrines of criminal syndicalism, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

RAYMOND E. SAMSON
Prosecuting Attorney
Hamilton County, Ohio

Motion to Quash

[Filed January 19, 1965]

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

CRIMINAL DIVISION

No. 85024

STATE OF OHIO,

Plaintiff,

v.

CLARENCE BRANDENBURG,

Defendant.

Comes now Clarence Brandenburg by and through Peter Outcalt, his attorney, and moves the court to quash the indictment in this case under which he is charged with violating Section 2923.13 RC by reason of a certain defect apparent on the face of the record in this case, to-wit: The indictment herein charges the Defendant with the violation of a statute which is not constitutional inasmuch as said statute denies the Defendant's rights as set forth in the first and fourteenth amendments to the United States Constitution. Furthermore, the Smith Act as amended, 18 USC 2385 which prohibits the knowing advocacy of the overthrow of the Government of the United States by force and violence supersedes the inforcibility of the Ohio Criminal Syndicalism Act (Section 2923.13 RC) which proscribes the same conduct.

PETER OUTCALT
Attorney for the Defendant

Entry Overruling Motion to Quash

[Entered February 24, 1965]

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

CRIMINAL DIVISION

No. 85024

STATE OF OHIO,

Plaintiff,

v.

CLARENCE BRANDENBERG,

Defendant.

This matter came on to be heard on the motion of the defendant, Clarence Brandenberg, to quash the indictment herein, the arguments of counsel, and the law, and the Court, being fully advised in the premises, finds said motion not to be well taken and hereby overrules the same to all of which the defendant excepts.

Motion for New Trial

[Filed December 8, 1966]

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

CRIMINAL DIVISION

No. 85024

STATE OF OHIO,

Plaintiff,

v.

CLARENCE BRANDENBURG,

Defendant.

Now comes Clarence Brandenburg, the defendant herein, and moves the Court for a new trial in this cause for the following reasons, to-wit:

1. Error of law in the Court's failure to sustain the Motion to quash the indictment.
2. Error of the Court in its failure to sustain defendant's Motion for a change of venue.
3. Error of the Court in its failure to sustain the defendant's Motion to inspect tapes, films and documents.
4. Error of the Court in its failure to sustain the Motion to suppress evidence.

5. Error of the Court in its failure to sustain defendant's renewed Motion to suppress evidence made at the start of the trial.
6. Error of the Court during the trial in admitting into evidence certain items obtained in the search of defendant's premises.
7. Error of the Court in its failure to sustain defendant's Motion for dismissal at the conclusion of the State's case in chief.
8. Error of the Court in its failure to sustain defendant's objections to the admissions of other testimony and exhibits.
9. Error of the Court in sustaining certain objections of the Prosecuting Attorney.
10. The verdict of the jury was manifestly against the weight of the evidence.
11. Other errors apparent on the face of the record herein.

Respectfully submitted

PETER OUTCALT
Attorney for Defendant,
Clarence Brandenburg

Copy received:

Melvin Rueger
Prosecuting Attorney

By: (illegible)
Assistant

—2—

Reporter's Transcript of Proceedings

HAROLD ALAN LEONARD being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Nikolin:

Q. Sir, would you state your full name, please, and spell your last name? A. It's Harold Alan Leonard. L e o n a r d.

Q. And where do you live, sir? A. 6741 Maple Street in Mariemont.

Q. And, Mr. Leonard, directing your attention to—Well, let me ask you this. Where are you now employed, sir? A. WKRC-TV.

Q. What do you do there, sir? A. I am an announcer-reporter.

Q. And how long have you been engaged in that particular kind of work, sir? A. Oh, approximately ten years.

Q. Directing your attention to the 28th day of June of 1964, where were you employed at that time, sir? A. Crosley Broadcasting, now known as Avco Broadcasting, WLW.

Q. And for how long had you been employed by WLW-TV prior to June the 28th, 1964? A. Approximately two years.

Q. And, sir, directing your attention to several weeks

—3—

prior to that time, I'll ask you whether or not you had occasion to have a conversation on the telephone concerning a meeting which was to take place approximately on the 28th of June, '64?

Mr. Outcalt: Objection.

The Court: What is the objection?

Mr. Outcalt: Well, Number One, he hasn't identified the time. Number Two, he hasn't identified with whom. And, Number Three, it's a leading question.

The Court: All three objections will be overruled. You can't go into the conversation, but—

Mr. Nikolin: No, I am just asking him if he had a conversation.

A. Yes, sir, I did.

Q. And, did you take note of the voice with whom you spoke at that time, sir? A. I would have to answer that in this manner. Not at first, but after several conversations I did recognize the voice as being the same one.

Mr. Outcalt: Objection, and ask it be stricken as not responsive.

The Court: What was the question?

(Question read by the Reporter.)

The Court: Oh, it's generally, generally responsive. Overruled.

Q. Now, sir, can you tell these ladies and gentlemen on

—4—

how many occasions did you converse with the same voice, prior to the 28th of June, '64? A. Only generally. I couldn't give you any specific number, but there were—

Q. Your best estimate. A. There were several calls.

Q. And, as a result of those calls, Mr. Leonard, did you have occasion to go to 350 Two Mile Road on June the 28th, 1964?

Mr. Outcalt: Objection.
The Court: What is your objection?
Mr. Outcalt: Leading.
The Court: Overruled. Proceed.

A. I can't answer as to whether I went to 350 Two Mile Road; I did have an occasion to go to a house on Two Mile Road, but I do not know the number.

Q. All right, sir. Sir, the location that you went to, at 350—or at Two Mile Road on that date, June the 28th, was that location in Hamilton County, Ohio? A. Yes, sir.

Q. And, sir, what did you do when you got there—or tell us what occurred after you got to the general location of Two Mile Road on that day. A. We got to Two Mile Road—

Q. When you say "We" who do you mean, sir? A. My photographer, Gene Neuber, and myself were assigned to

—5—

this particular news coverage by Gene McPherson, the —now Vice-president of Avco in charge of news. We got to the area, turned down Two Mile Road, and got off of the paved section of it on to a dirt or gravel road, where we finally came up upon a car that was blocking the road. There were several hooded individuals carrying guns that stopped us at that point.

Q. What kind of guns, sir? A. Sir?

Q. What kind of guns? A. I recall at least one shotgun and one rifle, and I think there was another weapon. There were either three or four men. At least, I think they were men, because they had hoods on, they didn't look like women.

Q. What kind of hoods? Describe them. A. If I recall, they were—they appeared to be homemade, out of a sheet, with, you know, the holes in the eyes.

Q. All right, sir. A. They asked who we were, and then proceeded to lead us to a home at the very end of Two Mile Road.

Mr. Nikolin: Mark these.

(Two photographs were marked State's Exhibits 1 and 2 for identification.)

Q. Sir, let me show you this item marked 1 for identification, if you will. I'll ask you to look at that. See if you recognize that. A. Yes, sir.

—6—

Q. Sir, I'll ask you if that is a fair and accurate representation of what it portrays? A. Yes.

Q. And is that the same home that you say you saw when you arrived there or were led there? A. I believe it is, sir.

Q. Now, sir, did you have occasion then to notice the area of where you were? That is, the premises and surrounding grounds and so on and so forth? A. Yes.

Q. Let me show you this item marked 2 for identification and take a look at that, if you will, sir. Recognize that, do you, sir? A. Yes, I do.

Q. I will ask you whether or not that is a fair and accurate representation of that particular area as you saw it on the 28th of June? A. With one exception.

Q. Yes? A. There were numerous automobiles parked in an area in the background of this picture by what appears to be a dilapidated garage.

Q. I see. And did you notice anything else about that area, sir? A. Well, there were many things I noticed, but

—7—

what specific reference—

Q. I mean, did you have occasion to notice any kind of a structure such as a cross or anything of that sort? A. Yes.

Mr. Nikolin: Mark these 3 and 4.

(Two photographs were marked State's Exhibits 3 and 4 for identification.)

Q. Sir, let me show you an item marked for identification Number 3, and I'll ask you to look at that, sir. Recognize that, do you, sir? So far as the general area is concerned, is what we are interested in. A. I believe I do recall the post with the meter of some sort on it.

Q. Would that be a— A. This is the general type of area, yes.

Q. That would be a fair and accurate representation of that particular area?

Mr. Outcalt: Objection.

A. I would believe so, yes.

Q. Sir, let me show you Exhibit, or item marked 4 for identification, and ask you to look at that, if you will, sir. A. This is a close-up of the other one.

Q. Is that a fair and accurate representation of what it portrays? A. Yes, it is.

—8—

Q. All right. Now, sir, Mr. Leonard, would you tell these ladies and gentlemen what took place from that point forward? A. From the point of arrival?

Q. Yes. You say you were escorted to the house? A. Correct. We were met—there were several hooded indi-

viduals. If I remember correctly, there were twelve or thirteen of them.

Q. Were all these individuals wearing hoods, sir? A. Yes, they were.

Q. All right. A. And at all times. I never saw a face.

Q. All right. A. There was some discussion; I cannot recall it accurately. We then were allowed into the home, but refused admission to the back of the house where we were told there were women and we were not allowed back there. And, of course, made no attempt to do so.

There was a ceremony, if you can call it that, of a record playing by one of the reputed leaders of one of the Klan organizations. I don't know which one.

Q. Would you tell these ladies and gentlemen how you came to go to this location, Mr. Leonard? A. By these anonymous phone calls that I had received, telling me that there was going to be a news story, and that if I

would not call the police or notify the FBI, that we would be given exclusive, an exclusive news story.

Q. Well, sir, was this the same voice that you had spoken to prior to the 28th of June? A. Yes, it was.

Q. And, had you spoken to the same voice after the 6th of August of 1964? A. Yes.

Q. Had you spoken to the same voice on any occasion between the 28th of June and the 6th of August? A. Yes, sir.

Q. And, sir, did you eventually have occasion to learn the identity of that voice?

Mr. Outcalt: I will object, your Honor.

The Court: Yes. I think he can ask him whether or not he recognized the voice.

A. I recognized the voice.

Q. All right. And, did you have occasion at any time to come face to face with the individual who had that voice?

Mr. Outcalt: I will object.

The Court: What is your objection?

Mr. Outcalt: Well, your Honor, he is talking about an, anonymous phone calls and everything like that. I don't know if this man is an expert on speech or anything like that.

—10—

The Court: He said he recognized the voice. Now, of course, he has the right to ask him as to how he recognized that voice, whether he was acquainted with the voice, whether he ever talked to the individual with that voice. It is, of course, subject to your cross-examination.

Q. Can you answer that, sir? A. Would you please repeat the question?

(Question read by the Reporter.)

A. I believe I have, yes.

Q. And do you recall when that was, sir? A. I don't recall the exact date. It was some time after this person had been arrested.

Q. Now, sir, let me ask you to take a look at this defendant here, Clarence Brandenburg. Do you recognize him, sir? A. Yes, I do.

Q. And when did you first have occasion to meet him, sir? A. I believe it was after Mr. Brandenburg had been arrested.

Q. And, did you recognize his voice at that time, sir? A. At that time I think I would have to give a qualified, I am not sure.

Q. When did you first have occasion to recognize his voice? A. During subsequent numerous phone calls to my place of business, and my home, and when it got to the

point when I would get the phone call and immediately recognize it and say, "Hello, Clarence."

Q. Was that this defendant's voice, sir? A. Yes, it was.

Mr. Outcalt: Objection.

The Court: Yes. It's leading. You can ask him whose voice it was.

Q. All right, whose voice was it?

Mr. Outcalt: I will object to that, too. He said the only time he came face to face with this particular defendant he didn't recognize the voice from that. Subsequent telephone calls could have been with anybody, your Honor.

Mr. Nikolin: That is what we are asking him.

The Court: I don't think he said he didn't. He had a qualified— What was your answer to the— what was his answer to that question before when he said he had to qualify his answer? With reference to the recognition of the voice.

(Answer read by the Reporter.)

The Court: All right, your objection will be overruled.

Q. On how many occasions did you meet this defendant face to face, sir? A. The exact number I couldn't recall, but—

—12—

Q. Approximately. A. Numerous occasions, I would have to say.

Q. Did you recognize his voice at that time, sir, when you were face to face with him? A. Yes.

Q. And I'll ask you, sir, whether or not that was the voice that you first heard of several weeks prior to June the 28th, 1964, on the telephone? A. Again I would have to say, I would have to qualify my answer by saying I believe so. Because I did not pay that much attention to the voice prior to going to the meeting.

Q. Now, sir, let me ask you this question. On June the 28th of 1964, did you have occasion to come into contact with that voice again on Two Mile Road?

Mr. Outcalt: Object. It's leading.
The Court: Overruled.

A. Again I'll have to give a qualified answer, and that is that at the time with shotguns and rifles around you, I was a little bit too nervous to pay too much attention to any voices.

Q. What were you nervous about, sir? A. If you had a—if you were greeted with a shotgun and a rifle pointed at you or in the general direction of you, that would make you nervous, would it not?

Mr. Outcalt: Objection.

Q. Did it, sir, make you nervous? A. Yes, it did.

—13—

Mr. Nikolin: Mark this.

(A movie film was marked State's Exhibit 5 for identification.)

Q. Did you have occasion to photograph the activities— A. I did.

Q. —of the actions that took place? A. I did.

Q. While you were at Two Mile Road? A. I did. I had occasion to take part in photographing the activities.

Q. Were you present when the movie film was made? A. Yes, I was.

Q. At all times, sir? A. At all times. I shot part of it.

Q. Sir, let me show you this item marked 5 for identification. A. Yes, sir.

Q. Do you recognize that, sir? Is that the movie film that was shot at that time? A. I couldn't tell you unless I saw it, sir.

Q. Let me ask you, Mr. Leonard: Did you have occasion to view the film which was taken— A. Yes.

Q. —in your presence and partially by you? A. Yes, and put it on the air.

—14—

Mr. Nikolin: All right. Your Honor, in order to be able to ask the further questions which are necessary, we would like to project this film at this time for this witness' viewing.

The Court: Very well.

Mr. Outcalt: I will have to object to this being projected at this time, your Honor.

The Court: Well, it will be admitted on a professional statement that there will be a connection between this film and the defendant.

Mr. Nikolin: There will be that, your Honor.

The Court: Very well.

Mr. Nikolin: We would like at this point to introduce it into evidence.

The Court: You, of course, first have to see whether or not—what the witness will have to say about the film. I don't know if this is the film or not, or if there is any connection between the film and the defendant. I am taking your professional word there will be a tie-up between the film and the defendant.

Mr. Nikolin: Yes.

The Court: All right, proceed.

(State's Exhibit 5 for identification, a movie film with sound, was shown. Transcription as follows:

—15—

"I would like to—how far is the nigger going to—yeah. Over there. This is what we are going to do to the niggers. I would like to ask—call this—Patrick. A dirty nigger. Send the Jews back to Israel. I'm for it. Let's give them back to the dark—garden. Save America. Let's go back to constitutional betterment. Bury the niggers. We intend to do our part. Give us our state rights. Freedom for the whites. Nigger will have to fight for every inch he gets from now on.

This is an organizers meeting. We have had quite a few members here today which are—we have hundreds, hundreds of members throughout the State of Ohio. I can quote from a newspaper clipping from the Columbus,

Ohio Dispatch, five weeks ago Sunday morning. The Klan has more members in the State of Ohio than does any other organization. We're not a revengent organization, but if our President, our Congress, our Supreme Court, continues to suppress the white, caucasian race, it's possible that there might have to be some revengeance taken.

We are marching on Congress July the Fourth, four hundred thousand strong. From there we are dividing into two groups—one group to march on St. Augustine, Florida, the other group to march into Mississippi. Thank you."

Q. Mr. Leonard, do you now recognize this item marked 5 for identification? A. Yes, I do.

Q. Is that the film that was taken at that time? A. It

—16—

is a part of it.

Q. And, let me ask you, sir, at the time that the film was taken during your visit there, were there two sections, one in the house and one outside? A. Yes, there were.

Q. And, sir, the voice inside of the house at the time that the film was taken, the individual who was doing the speaking, do you recall how he was dressed? How was he dressed so far as the— A. The only one, the only thing I would recall that was distinctive would be, if I recall, a red hood as opposed to the rest wearing the white hood.

Mr. Nikolin: Mark this.

(A red cloth was marked State's Exhibit 6 for identification.)

Q. Sir, let me ask you to look at this item marked for identification No. 6. Recognize that, do you, sir? A. It is similar. I can't say it's the same one, but it is similar.

Q. Similar to the one you saw? A. Yes.

Q. And did you recognize— Let me ask you this. Did you recognize the voice that was doing the speaking inside of the house at the time you were making the movie? A. Not at the time.

—17—

Q. Not at the time. Do you now recognize the voice on this sound film that you just heard?

Mr. Outcalt: Objection.

The Court: You mean this morning here?

Mr. Nikolin: Just now, your Honor.

The Court: Overruled.

A. I would have to say yes.

Q. And whose voice is that, sir? A. I would believe it to be that of Mr. Brandenburg. However—

Q. Is that the defendant in this case? A. It is.

Mr. Outcalt: Objection. You interrupted him. He said, I believe it to be Mr. Brandenburg. However— Would you please let him finish.

Q. Go ahead. A. However, as I say, I am not an expert as such on voices. There are electronic means of doing this, however.

Q. Mr. Leonard, what did you do after you had completed the film at this particular occasion? A. Got out of there in a hurry.

Q. And what, if anything, was done with the film? A. The film was, of course, in its raw state and was taken

back to WLW, processed—that is, developed—put together, not in the order that it was shown this morning. There were

—18—

several other pieces that are not here this morning, that were used on the 11:00 o'clock show that evening, and again on the 6:00 o'clock show the following day.

Q. What show is that, sir? A. WLW-TV 5's newscast.

Q. And, at 11:00 o'clock p.m. on the 28th of June, 1964? A. Yes, sir.

Q. And, sir, would you tell us when did you next have occasion to come into contact with this same voice, after that particular time? A. Very shortly thereafter. I quite frankly can't recall because of the large number of phone calls that flooded the station that night, whether it was that night or the next day or so, but it was quite soon after the film was shown.

Q. Sir, I will ask you whether or not you had occasion to be at a location known as 618 Mill Street in Arlington Heights at a TV Repair Shop? A. No, sir, I did not.

Q. Never have been there? A. No, sir.

Q. And, sir, let me ask you if you had occasion to notice this defendant's right wrist when you came into contact with him personally. Do you recall that, sir? A. No, sir, I did not.

Q. The portrayal of the scenes which are incorporated

—19—

within this item marked 5 for identification, the sound movie film, are they fair and accurate representations of what took place at that time? A. Yes, with, as I say, there are several things missing.

Q. Yes, but what is there is a fair and accurate representation, is that correct, sir? A. This is correct.

Mr. Nikolin: If your Honor please, we would like to introduce into evidence at this point the item marked 5 for identification.

Mr. Outcalt: I will object, your Honor.

The Court: All right, step up here, counsel.

(Discussion out of the hearing of the Reporter.)

The Court: A short recess, ladies and gentlemen. Short recess.

(Recess taken. Discussion between Court and counsel during the recess out of the presence of the jury.)

(Jury returned from recess.)

The Court: All right, you may proceed.

Mr. Outcalt: Your Honor, do I understand my objection to admitting this into evidence—

The Court: I will reserve my ruling on it.

Mr. Outcalt: Okay.

Mr. Nikolin: Mark this.

(A movie film was marked State's Exhibit 7 for identification.)

—20—

Q. Mr. Leonard, you say that Exhibit 5, the— A. You are referring to the film that we saw?

Q. Yes. The original. Where is that original at? A. Here it is up here.

Q. This item marked for identification 5, you say is the original and that does not encompass everything that took place at the time you photographed it, is that correct, sir? A. I did not say this was the original, no. I said this is part of what was shown but had been chopped up.

Q. Now let me ask you, why was it chopped up? A. For several reasons. One, that NBC wanted part of the film,

we had to ship some of that to them. After they showed it, it was returned, spliced back in, it was changed around in position for re-showing the following day so it wasn't exactly the same thing that the viewers had saw before, and then there are parts missing that Mr. McPherson for one reason or another took out for promotion uses and so forth.

Q. Is there anything incorporated within item marked 5 for identification which was not taken in your presence? A. No, sir, that was all taken in my presence.

Q. All right. Now, sir, let me ask you: Do you know if any copies were made of that film? A. I know that copies were ordered to be made, yes.

Q. Sir, let me show you an item marked for identification Number 7. A. Yes, sir.

Q. And ask you if you have just viewed that film? A. Yes, I have.

Q. And is it a fair and accurate representation of what you photographed on the 28th of June? A. Yes, sir.

Q. At Two Mile Road. And does it have some parts which are not in the original? A. Yes, it does.

Q. Or item Number 5? A. That's correct.

Mr. Nikolin: Your Honor, I would at this time like to introduce into evidence items 5 for identification, and item 6 for identification.

Mr. Outcalt: Objection.

The Court: Of what?

Mr. Nikolin: Or 7, I'm sorry. 7. The copy.

The Court: Of what?

Mr. Nikolin: Of item 5. It has some things that item 5 does not have in it. Taken by this individual.

The Court: Are you showing anything else?

Mr. Nikolin: After it has been introduced into evidence I would then like it shown to the jury, your Honor, so they can have the benefit of that, also.

The Court: I think you better show it first, to

—22—

determine whether or not it's material to the issue in this case.

Mr. Nikolin: All right. Fine.

The Court: Then the Court will rule on it.

Mr. Nikolin: Fine.

The Court: As I understand it now, this picture here that you are running, together with the first picture you ran, is a complete picture of everything that took place on that day?

Mr. Nikolin: That may not be true, your Honor, but this item 7 will have some parts which are not included within 5.

The Court: Which were taken on that day?

The Witness: Yes.

Mr. Nikolin: Same date, time and place.

Mr. Outcalt: Your Honor, I don't see how we can receive a copy of the original into evidence.

The Court: If he testifies that—

Mr. Outcalt: It was not made in his presence; he said it was ordered.

The Court: When he sees it, he was there, if he can testify that it's an accurate picture of what took place, he can testify.

Mr. Outcalt: I object.

The Court: If he will so testify. I don't know what

—23—

he will testify to. That is up to the prosecutor to

ask him questions. If he doesn't, you make your motion to, to take it from the consideration of the jury.

(State's Exhibit 7 for identification, a movie film with sound, was shown. Transcription as follows:

"This is an organizers meeting. We have hundreds of members throughout the State of Ohio. I have a clipping here in front of me which is taken from a Columbus, Ohio newspaper five weeks ago, stating that we have more KKK members in the State of Ohio than does any other organization. We are making a march on Congress, four hundred thousand strong, on July the Fourth. From there we are spreading into two groups, one to march into Mississippi and the other into St. Augustine, Florida. I can quote—personally, I believe the nigger should be returned to Africa, the Jew returned to Israel. Thank you."

Mr. Nikolin: Now, your ~~Honor~~, I think the Court is going to have to admonish this defendant for making a demonstration in the presence of this jury.

The Court: What was that, Mr. Prosecutor? I didn't hear what you said?

Mr. Nikolin: I say, your Honor, I am suggesting to the Court that the defendant be admonished for making a demonstration in front of the jury.

—24—

The Court: Have your client, Mr. Outcalt, observe the ordinary courtesies of the courtroom. All right, proceed.

Mr. Outcalt: Excuse us, your Honor.

(Continuation of State's Exhibit 7 for identification. Transcription as follows:

"This is what we are going to do to the niggers. I would like to ask—call this—Patrick. A dirty nigger. Send the Jews back to Israel. I'm for it. Let's give them back to the dark—garden. Save America. Let's go back to constitutional betterment. Bury the niggers. We intend to do our part. Give us our state rights. Freedom for the whites. Nigger will have to fight for every inch he gets from now on."

Q. Sir, directing your attention to item 7 for identification, do you now recognize that item, sir? A. Yes, sir.

Q. Taken in your presence and partially by you on the 28th of June, 1964, is that correct, sir? A. That's correct.

Q. And is that a fair and accurate representation of what was taken, either by you or in your presence at that location on that date? A. Yes, it is.

Q. Sir, the voice which you heard within the dwelling,

in the house, do you now recognize that voice, sir? A. Again, I would have to say yes, but I did not recognize it at the time.

Q. Do you now recognize it? A. I would say yes.

Q. And is that the voice of the defendant Brandenburg? A. Again, as I answered before, I would have to say yes, but I'm not an expert.

Q. All right. Now, the voice which you say within the house you recognize now to be the defendant Brandenburg, can you tell us, sir, what color hood that particular individual was wearing? A. On that date?

Q. Yes. A. That would be a red hood.

Q. Would it be similar to item marked for identification Number 6? A. Yes, sir, I believe I have answered that already.

Mr. Nikolin: Your Honor, at this point we would like to introduce into evidence, commencing in chronological orders, item 1, 2, 3, 4, 5, 6 and 7.

The Court: Very well.

Mr. Outcalt: May I be heard?

The Court: Yes, sure.

Mr. Outcalt: Items 1 through 4, the defendant has

no objection whatsoever to those, your Honor. 5 and 7, I do object to the admission of those films into evidence because of the fact that, as I say, they have been edited, chopped up, the witness himself says they are incomplete; 7 is a copy, which has been apparently mutilated by the network to some extent; as to item 6, I don't think that there was any identification by the witness except he said this is one that looked like the one I saw out there on Two Mile Road.

So, I would object to 5, 6 and 7.

The Court: Objection will be overruled.

Mr. Outcalt: Note my exception.

(State's Exhibits 1 through 7 for identification were received into evidence and marked State's Exhibits 1 through 7.)

Mr. Nikolin: You may cross-examine.

Cross Examination by Mr. Outcalt:

Q. Mr. Leonard, you are now employed by WKRC-TV, Channel 12, is that correct? A. That's correct.

Q. And you said that—when did you go with Channel 12? When did you go to work for them? A. To be exact, I can't give you the day, but it was the day of the Ku Klux Klan rally across the river.

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They hired me that day to cover that meeting. I believe it was in either September or October of last—well, it would be '64. Or '65. I forget which. I really am not certain on the date.

Q. You can't recall if it was '64 or '65? A. I would have to try and refresh my memory. Well, I have been there a year and a half, so whatever date it goes back.

Q. That would be— A. Now you figure it out.

Q. Well, let's see. This is 11-66, that would be, a year and a half would be about March or April of '65. A. Well, it would have been '65 then. It would have been September of '65.

Q. That was approximately over a year after the— A. That is correct.

Q. —meeting you attended. Now, before you were employed to cover this Ku Klux Klan meeting across the river by Channel 12, how long had you been gone from WLW-T? A. Oh, about three months, if I recall, sir.

Q. And then you would have left WLW-T just about the end of 1964? A. No, it would have been in '65.

Q. The end of 1965? A. No. As I say, I was employed

—28—

by WKRC around September of '65, and I left 'LW, I believe it was, in June of '65.

Q. June of '65. That would have been approximately one year after the meeting on Two Mile Road? A. That is about right, yes.

Q. Now, sir, how long prior to that were you employed by WLW-T? A. Approximately two and a half years. A little bit short of three years.

Q. Where did you work before that, sir? A. WCKY.

Q. This is your second time with— A. No, WCKY Radio.

Q. I get WKRC and WCKY confused. You were in the radio business with WCKY? A. That's correct.

Q. About how long? A. I was there for two years.

Q. And this meeting that you attended on July—pardon me—June 28th, 1964, I presume that you had previously had some—you said you had previously had some conversation about that meeting with an individual over the telephone? A. That is correct.

Q. And, did you then report these conversations to Gene

McPherson, your boss? A. I did, sir.

Q. And was it Mr. McPherson who assigned you and Mr. Neuber to cover the meeting? A. That is correct, sir.

Q. And on these Exhibits 3 and 4, if you will look at them a moment, sir— We'll take Exhibit 3 here which is a, I guess you would call it a long shot of a couple of poles. Do you believe that is a picture that was taken at 350 Two Mile Road? A. I believe it is, yes, sir.

Q. And— A. If you want my reasons I can tell you why.

Q. Yes, if you would. A. Specifically, this is a concrete block where a cross had been, there is a pole with a utility meter of some type on it, and the other pole in the background.

Q. And, this is a close-up of that same— A. Same picture.

Q. Obviously? A. Yes, sir.

Q. When were these, 1, 2, 3, 4 taken, sir? A. I would have no idea, sir.

Q. Were you there when they were taken? A. I was not.

Q. Do you know if they were taken by your employer at

—30—

the time, WLW-T, or the Cincinnati Police Department? A. All I could give you is hearsay, sir. I understand that the Cincinnati Police Department took the pictures.

Q. When you went out on June 28th, 1964, to number 350 Two Mile Road, what time of the day or night was that that you got there, sir? A. It was late afternoon.

Q. And, well, what would you say, 4:00 o'clock, 5:00 o'clock? A. To the best of my recollection, it would be in that time period, yes.

Q. Well, now, actually, it probably would have been more like 4:00 o'clock because— How long were you there? A. That, again, is difficult to recall, the exact time period that we were there. We were there for a considerable length of time. I would say at least two hours. Possibly more.

Q. What time did you get back down to the station? A. We didn't go directly back to the station. We hadn't eaten so we stopped at Gene's home, which was in the area—that is, Mr. Neuber—and had something to eat and called in to the station. And, I roughly estimate that at about 8:00 o'clock in the evening.

Q. When were the films developed, sir? A. That evening, shortly after our arrival at the station.

Q. Now, during the entire time of approximately two

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hours that you were at number 350 Two Mile Road, were

there any other individuals present besides you and Gene Neuber who weren't covered by some sort of a hood or bedsheet or something? Other than you and Gene Neuber? A. That I saw?

Q. Yes. A. Not that I saw.

Q. Everybody you saw on Two Mile Road that afternoon had a hood or disguise of some sort on? A. This is correct.

Q. You could not recognize anybody by facial, facial features or physical make-up, or anything like that? A. No, that would be impossible, sir.

Q. Now, you say that the phone calls that you received prior to going out there and the voice that you heard at the inside portion of the meeting, you say that at that time you could not positively identify the man who spoke in the house with the voice you heard on the telephone? A. No, not at that time.

Q. Subsequent events have led you to believe that it might be Mr. Brandenburg? A. Both phone and personal conversations, yes.

Q. But, I believe you said, that you do not possess the necessary expertise to testify to this as a positive fact? A. No, only by the numerous phone calls.

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Q. Did you ever meet a fellow by the name of Jack Mink? A. What was the last name again?

Q. Mink. M I N K? A. I may or may not have, I meet so many people in my business every day that it's impossible to keep track of every single one.

Q. And you wouldn't know whether Jack Mink could imitate Mr. Brandenburg's voice or not?

Mr. Nikolin: There is an objection. Just a minute. There is an objection to that question, your

Honor. He is asking him, this witness, for a conclusion.

The Court: He said he doesn't know, he met so many people he wouldn't be able to recognize him.

Q. Now, you say that the shotguns and rifles that were out there at this place that day made you, I believe you said, nervous? A. Yes, sir.

Q. You said that they were pointed at you, is that correct? A. In the same general direction.

Q. I'll ask you, sir, did anybody make any threat with any of those weapons to you or Mr. Neuber? A. Not specifically. The threat was implied, let me put it that way. My interpretation was, just don't do anything out of the way, those things may be loaded, and I wasn't going

to ask.

Q. And you didn't do anything that you would consider out of the way? A. No.

Q. Exhibit Number— Well, let me back up a minute here, Mr. Leonard. I would like to ask you about the sequence in which these films were made. In other words, where was the first film taken that day, when you and Mr. Neuber—I don't care whether you took it or Mr. Neuber—where was it made? A. This is going to be difficult to answer. If I may, you noticed there were differences on the films. There was more than one take of each scene. If you noticed, the first film had some things in it that the second film did not. In other words, we re-took the scenes at least twice.

The best of my recollection is that the light was getting poor for shooting film and we shot the outside first, out of sequence of which a normal meeting of this type of

which I am familiar would be, and then went inside to the house because we could use our artificial lighting there and film that. That is my recollection. It may not be correct.

Q. Well, the first place you went was inside the house, I believe? A. The first place we went was inside the house, after we had a discussion outside of the home.

Q. And, I believe, at that time you said that there were

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some individuals meeting in another room and you weren't invited back there? A. We were specifically told we were not allowed back there.

Q. And, then these individuals came out? Did they come out from that room? A. No, sir. No, there were—the voices we heard in the back room were women. At no time did we see any women. And these other individuals did not come from the back room, they were on the premises.

Q. Now, to the best of your recollection then, you went outside to make your takes outside and then went inside? A. I believe so. I may be wrong in that. I may be wrong in the sequence, but I think the light was getting poor for shooting because of the trees and the wooded area and we had to get that first.

Q. After— Well, the first time this film was run was 11:00 p.m. on the 28th of June on the television, correct? A. That is correct.

Q. How soon after that were you contacted by the Cincinnati Police? A. I was contacted before it ran.

Q. When? A. We put what we call a promo on the air that we had an exclusive film of a Ku Klux Klan

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Meeting in Cincinnati. I was contacted by my competition

within two minutes asking me to give them the information so they could use it, which I refused.

Q. Who do you mean by your competition? A. Bill Gill at the time.

Q. Bill Gill was on 12 at the time? A. Yes, where I am now employed. Within a few moments a Cincinnati Police Officer arrived at the station wanting to know what went on.

Q. Who was the Cincinnati Police Officer? A. To my recollection it was Sergeant, now Lieutenant, Lind.

Q. Leicht? A. No, not Leicht.

Q. Lind? A. I think Lieutenant Lind was there. He may have been accompanied by Leicht. I believe there were two officers.

Q. Lieutenant Lind is presently with the Crime Bureau? A. Yeah, that is correct, sir.

Q. That is the same man, and he contacted you within a few minutes after the— A. The reason he contacted me is when I refused to give the information to Bill Gill, Mr. Gill then called the Police Department wanting to know if they knew anything about a Ku Klux Klan Meeting, told them he had heard it on our station, and that was what prompted the police to come to see us.

Q. Did Lieutenant Lind ask you where the meeting was? A. He did.

Q. Did you tell him? A. I did not.

Q. Did he ask at any time subsequent to that where it was? A. I can't recall whether it was Lieutenant Lind, but there were a number of police and FBI officers that asked me. And I did not at any time give them the information. That was part of the deal made on the telephone, that I would not reveal where it had taken place.

Q. Now, the film that you have seen exhibited here this morning, both number 5 and number 7, would you say that either one of them is a complete composition of all the film that was taken on June 28th? A. Not complete, no, sir.

Q. Is it true that neither one of them individually is complete? A. That is correct.

Q. Collectively would they even be complete? A. No.

Q. There are parts of those films that have been removed and you don't know their whereabouts? A. That is correct.

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Q. Who cut them up? A. I couldn't give you the individual but it would be the News Department of WLW.

Q. Did Gene McPherson ever do anything with these films? A. Well, he would have been the one that would have had to be responsible for it. He was the News Director at the time.

Q. Do you know specifically if Gene McPherson took out parts of that film that have never been returned to the station or to the police? A. I couldn't answer that specifically, sir.

Q. I will call your attention to a point in the film which shows up in different places in 5 and 7, when individuals are walking away from the cross, there is the word "Patrick" yelled out. Did you hear that? A. Yes.

Q. All right. What is that about? A. The best of my recollection, it was something having to do with patriotism and Patrick Henry.

Q. It was at least a full sentence, is that right? A. To the best of my recollection it was, yes.

Q. Was that in your original film? A. I would have to say I don't really know. The full statement would have

had to have been in the film, but whether we used it that way, I don't know.

Q. I don't mean if you used it or not, but whether it was in the film that you brought back to Channel 5? A.

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Whatever the statement was, was on that film, yes.

Q. You say this film besides being used at 11:00 p.m. on the 28th was used at 6:00 p.m. on the 29th, is that correct? A. To the best of my knowledge, yes.

Q. And in addition to the voices on the film, I presume there were commentary by a member of the staff? A. By myself and Mr. Neuber that night, of the 28th, and I am not sure—again, I believe again at 6:00 the following day.

Q. Now, this copy that was made was shipped where? A. Well, now, I don't know if this copy was made and shipped anywhere. I know a part of it, of the film, was shipped to NBC in New York for their use.

Q. Now, when you ship a film—you have been in this television business for a long time—now, when you ship a film to the network, do they return it to you?

Mr. Nikolin: Objection. Wait a minute. Objection. He might ask in this particular case what they did, if he knows, but I don't want any generalities, and I don't think this is accepted—

The Court: I don't see any harm to know the general procedure that was taken. He may answer.

A. May I have that question again, please?

(Question read by the Reporter.)

A. When we request it.

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Q. Do you know if you requested this returned?

Mr. Nikolin: Objection, your Honor. Now, that is clearly wrong.

The Court: If he knows he may answer.

A. Yes, we did request the film be returned.

Q. When did you get it baek? A. I can't answer that.

Q. Do you happen to know if this film was subsequently shipped to Neil Wetterman, W E T T E R M A N, in New York? A. No, that would be a question Mr. McPherson would have to answer.

Q. Do you happen to know if Mr. McPherson is under subpoena to come in to this courtroom?

Mr. Nikolin: Objection. Wait a minute. Objection.

The Court: Sustained.

Mr. Outcalt: One moment, please, your Honor.

Q. Oh, Mr. Leonard, this red hood. You, I believe, in your testimony described this thing as similar to a red hood that you saw on the 28th of June, 1964? A. I would just say similar, yes.

Q. Is there anything that you would believe is different about this hood than there was about the one on the 28th?

Mr. Nikolin: Objection to his question.

The Court: He may answer.

Mr. Nikolin: He is phrasing it improperly.

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The Court: He has a right to cross-examine him.

A. The only thing I would have to say, and this is supposition, if you noticed on the film it was heavily stained with sweat. I don't see any sweat stains on the hood now, but that would be the only thing.

Q. Now, Mr. Leonard, in your films, that were shown here previously, the films that were made in the house, can you identify the person from whom those voices came as to how he was dressed that day? In other words, which, which particular individual in those films by description was that? Was it the man—can I ask it this way—was it the man with the red hood or wasn't it?

Mr. Nikolin: When, your Honor? This is what is troubling me. When is he talking about.

Q. I am talking about when the films were made inside of the house. I want to know whose voice was that on the film? A. When the films were made inside the house, I could not tell you whose voice it was, or who was behind the hood.

Q. Can you tell which hood it came from under? A. Oh, yes.

Q. All right. Which, please? A. Yes, the voice that was on our recording was from the gentleman, I believe, with the red hood. He was the only one that had the red hood.

Q. And those voices inside, you are, you say you believe

they came from under the red hood. Are you sure they came from under the red hood? A. I am absolutely certain they came from under the red hood.

Q. All right. That is what I was trying to get. A. Yes.

Q. Now, outside in these pictures, which have been rearranged in certain ways between the two films—I am not

talking about the part where there were, the wolf howling at the Lake Como Railroad in the background and that is all you can hear, I am not talking about that, but—well, calling your attention specifically, there was, in each copy of the film there was the sound of footsteps. Do you know where that sound came from? A. Yes, from me.

Q. How did that come about? A. The house sat up on a bluff or on a hill, and, of course, the ceremony was taking place and we were shooting at a downward angle. In order to pick up sound, I had to take the microphone and take it as far as our cord would reach, which was approximately a little ditch down at the end of the steps, and lay the microphone down there, and those were my footsteps carrying the microphone down.

Q. There was a man that coughed. Who was that? A. That was me, also.

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Q. All right. Now, sir, in these films, I believe that the, conclusion of the time that the pictures were shown of the cross burning, and at the time when the individuals were walking down across what was apparently a creek bed or something, there were some voices which said, this is what we are going to do to the niggers. There was a voice that said something, garbled, but it sounded like, Bury the niggers. There was something about sending Jews back to Israel, and other statements. You heard this tape, did you not? A. Yes, I did.

Q. Can you identify the hood from, from which any one of these remarks came? A. I don't think I follow your question quite, sir.

Q. Can you tell me the individual who made those remarks? A. Do you mean, name them?

Q. Just describe them. I mean, were they coming from the red hood or white hood or do you know? A. I could only do that by having the film put up again, and as he spoke say that is the person that said it, but I couldn't identify them.

Q. How could you tell who the person was that was saying it? A. By reason of the sound track, the placement of the microphone, et cetera. But I couldn't tell you who said it.

Q. These voices that you heard making those statements

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walking away from the cross, on the film, did any of them sound to you like the man who was under the red hood in the house?

Mr. Nikolin: There will be an objection to that, your Honor.

The Court: He may cross-examine him.

A. I don't know, sir.

Mr. Outcalt: No further cross-examination, your Honor.

Mr. Nikolin: Just one question, I think, Mr. Leonard. Concerning Exhibit 6, I believe—

Mr. Outcalt: That's 6.

Mr. Nikolin: I think it's 6, the hood.

The Witness: Yes, sir.

Mr. Nikolin: From the time that you last saw it on June 28th, '64 until now, do you know whether or not it's been laundered or cleaned?

The Witness: No, I have no idea, sir.

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PAUL W. ROTH, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Nikolin:

Q. Sir, would you state your full name, please? A. Paul W. Roth.

Q. And your present address, sir? A. 520 Olden Avenue, Arlington Heights.

Q. How are you now employed, sir? A. I am employed as a machinist at General Electric.

Q. And, how long have you been there, sir? A. Since the 24th of January, this year.

Q. Of this year. Prior to that, sir, what did you do? A. I was Chief of Police in the Village of Arlington Heights since 1959.

Q. Were you Chief of Police on the 28th day of June of 1964? A. Yes, I was.

Q. And, sir, did you have occasion at 11:00 p.m. on that night to view the television newscast given by Channel 5,

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WLW-TV, under Peter Grant's newscast? A. Yes, I did.

Q. And, sir, did you have occasion to observe anything at that time that you were familiar with, an individual whom you knew?

Mr. Outcalt: Objection.

The Court: What is your objection? What is your objection?

Mr. Outcalt: Well, he said did he see an individual he knew.

The Court: Well. I don't know whether it has any bearing or not, let's see what his answer is. Overruled.

A. I was watching the television program, news program come on, and I recognized a voice that I have heard from time to time over the past five years.

Q. Whose voice was that, sir? A. The voice of Clarence Brandenburg.

Q. That is the defendant here, sir? A. Yes, sir.

Q. And, would you tell these ladies and gentlemen what you saw that led you to believe that you recognized the voice of Clarence Brandenburg? A. Well, at the time—

Mr. Outcalt: Objection. How could somebody see something and recognize a voice?

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Mr. Nikolin: Well, see or hear, put it that way.

The Court: What he seen or heard? I don't know whether he saw or heard—

A. At the time while I watched this film which was on television, as I say, I recognized the voice of Clarence Brandenburg. The following day I went to the television repair store that Mr. Brandenburg owned in the village, and I stopped in to see him. And while watching this film I noticed the marks on the right wrist and the left wrist of Mr. Brandenburg, and also a wedding band. I went up there to see if this would be the same as I had seen on the film, and they were.

Q. And, for how long had you known him? I think, you said five years, did I hear? A. Approximately five years.

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PEARL R. HOLLIS, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Nikolin:

Q. Sir, would you state your full name and spell your last name, please? A. Pearl R. Hollis. Last name, H O L L I S.

Q. And you, sir, are a Captain of Police of the City of

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Reading? A.That's correct, sir.

Q. And, how long have you been with the Reading, Ohio Police Department? A. Twenty-one and a half years.

Q. And, you were so employed and ranked on the 28th day of June of 1964? A. Yes, sir.

Q. Now, sir, did you have occasion to see a newscast on WLW-TV, Channel 5, on the 28th of June of 1964 about 11:00 p.m.? A. Yes, I did.

Q. Now, sir, prior to that time, did you know this defendant, Clarence Brandenburg? A. Yes, sir.

Q. For how long had you known him, sir? A. I have known Mr. Brandenburg at least eight to ten years prior to that time.

Q. Prior to that time. Were you familiar and acquainted with his voice, sir? Talk to him many times? A. Oh, yes, I had talked to him many times on the phone and personally and so forth.

Q. Sir, did you have occasion to make any comparison or connection between the voice that you heard on the television? A. Yes, I did.

Mr. Outcalt: Now, I object, your Honor. He can

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ask who it is; he cannot lead his witness like this.

The Court: Yes, you are leading the witness.

Mr. Nikolin: I am not—

Mr. Outcalt: Oh, yes, you are.

Mr. Nikolin: I asked him if he recognized him.

The Court: Ask him what he heard on the film, and ask if he recognized any voice on the film he saw that night.

Q. Would you tell these ladies and gentlemen? A. When I saw this film on the news that night, I recognized the voice of Mr. Brandenburg. And—

Q. What did you see when you recognized the voice of the defendant?

Mr. Outcalt: I object. He interrupted him. He said "And", and then he interrupted him again, your Honor.

The Court: All right, proceed.

A. When I saw this newscast, it brought to my attention the voice. When I—I wasn't watching the television at the moment, but when I heard the voice I looked and saw the subject talking, and I recognized the voice as being Mr. Brandenburg, who was on a, was in a robe, had a robe over his head.

Q. Had a what, Chief? A. He had a robe over his head. And he had, his hand across his chest, and speaking into a microphone. And, as I say, I recognized the voice as being

that of Mr. Brandenburg. Also, the fact that on his wrist he had, as he always did wear in the many years that I had known him, a wristband, that—he had—I—as I say, I have known him for many years and he always wore this wristband.

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Further Direct Examination by Mr. Nikolin:

Q. Captain Hollis, you will recall yesterday that I had asked you to take a look at this item marked 6 for identification. Do you recognize that, sir? A. Yes, I do.

Q. And, where had you come into contact with that? A. This was found in Mr. Brandenburg's business establishment on a window shelf, built out, partition or board, from the window.

Q. In the TV shop? A. In the TV shop in Arlington.

Q. All right. And, sir, let me show you— And this was taken at the time of the arrest and search, I take it, is that correct, Captain Hollis? A. Yes.

Q. On the 6th of August. Take a look at number 9, if you will, sir, and number 10. Do you recognize those two

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items? A. Yes, sir.

Q. And, where were they found, sir? A. He was wearing these at the time of his arrest.

Q. Where was the wristband? On which wrist was he wearing that? A. The wristband was on his right wrist, and the watch was on his left wrist.

Q. Had you seen those items in his possession before that date, sir? A. Yes, he always wore these items as long as I had known him. For many years he had worn a wristband on his wrist.

Mr. Nikolin: Would you mark these as one item.

(Three books, papers, two rifles, a revolver, envelope with contents, and a Bible were marked State's Exhibits 13, 14, 15, 16, 17 and 18 for identification.)

Mr. Outcalt: Sorry, your Honor, I want to take a minute to look at these things, which I have never seen before.

Mr. Nikolin: Mark this.

(An envelope with contents was marked State's Exhibit 19 for identification.)

Mr. Outcalt: All right, your Honor, I have looked at the Exhibits.

Q. Captain Hollis, let me show you item marked for identification number 13, consisting of three pieces. Do you

recognize that, sir? A. Yes, these items were all taken from his establishment and TV shop in Arlington Heights.

Q. How about item 14, this stack of various papers? A. Yes, sir, these items were all taken at the same time from his establishment in Arlington Heights.

Q. All right. Now, how about this item marked for identification number 15, shotgun and rifle and case? Do you recognize those, Captain? A. Yes, sir, I do. These items likewise were taken.

Q. Pardon me? A. These items likewise were taken from his establishment.

Q. What was the condition of the shotgun and rifle so far as being loaded or unloaded at the time they would found? A. They were loaded—the shotgun was loaded. And they were unloaded by one of the Cincinnati men.

Q. In your presence, you mean? A. Yes.

Q. Were you in the place at the time? A. Yes.

Q. Now, would you take a look at 17, Captain? A. Yes, sir.

Mr. Outcalt: You went from 15 to 17.

Mr. Nikolin: Yes, for the moment.

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Q. Recognize those? A. Yes, this was the ammunition taken from the shotgun.

Q. Shotgun and rifle and revolver, is that correct? A. Revolver was likewise taken from his—

Q. Item marked 16 for identification, a revolver, find that there, Captain? A. That was found there. It was also loaded and it was unloaded by a Cincinnati officer.

Q. And, Captain Hollis, let me show you item for identification number 18.

Mr. Outcalt: 19, Mike?
Mr. Nikolin: 18.

A. This likewise was taken from his establishment. It was lying with these other items on the table or extended bench.

Q. Now, Captain Hollis, would you tell these ladies and gentlemen when you found these items in the store, were they covered or uncovered, do you recall that?

Mr. Outcalt: I object, it's entirely immaterial whether they were covered or uncovered, your Honor.

The Court: He can show the position these items were in at the time he found them. I assume they were found as a result of the search warrant, is that correct?

The Witness: Yes, sir.

The Court: Very well.

A. The items were covered with newspapers on this shelf, haphazardly covered.

—73—

Q. Newspapers covered them, is that correct? A. Yes.

Q. Now let me ask you to take a look at item 19 for iden-

tification. A. I might mention on the pistol, after we had found this shotgun and the rifle, we had asked Mr. Brandenburg if there were any more weapons in the establishment, and he verified that there was this pistol in a desk draw, and he showed us where it was and that's where we found the pistol, and the pistol, as I say, was loaded and one of the Cincinnati officers unloaded it.

Q. Now, Captain Hollis, would you take a look at item 19 for identification, sir; see if you recognize that. A. Yes, sir. Yes, I recognize these items, and they likewise were found in his establishment.

Q. Same time, in your presence, Captain? A. Same time and place.

Q. Now, Captain Hollis, let me for a moment ask you: You had occasion—or did you have occasion to view the film which is marked for identification number 7? A. Yes, I have viewed this film.

Q. And, sir, do you recognize the scene within that movie film within the building? A. Within the building where this conclave took place?

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Q. Yes. A. Do I recognize the scene within the building?

Q. Have you seen it before on that movie film? A. Yes.

Q. And do you recall hearing a voice making some statement or other? A. Yes, I do.

Q. And do you recognize the voice on that film, sir? A. Yes, sir, I do.

Q. Can you tell these ladies and gentlemen whose voice that is? A. That was Mr. Brandenburg's voice. Clarence Brandenburg.

Q. Is that the same scene that you had seen on the 28th of June at 11:00 p.m. on television, Channel 5?

Mr. Outcalt: I object. It's repetitious and leading.

Mr. Nikolin: Well, let me rephrase that.

Q. Had you heard and seen—heard the voice and seen the scene before? A. Yes.

Q. And where? A. On a news broadcast, I believe the date was about June the 28th.

Mr. Nikolin: Your Honor, at this time we would like to introduce into evidence these items which we have marked for identification. I think they are—

—75—

commencing with 13 through 19, your Honor, at this point.

The Court: These items were all seized where?

Mr. Nikolin: At the TV shop owned by this defendant in his presence.

The Court: Pursuant to the issue of the search warrant?

Mr. Nikolin: That's correct.

The Court: Were they all—I mean, is there some relation—

Mr. Nikolin: There is a direct relationship between each one.

The Court: I mean, all the paper items. I haven't seen them. Do they relate to this organization?

Mr. Nikolin: Yes, your Honor.

The Court: KKK?

Mr. Nikolin: So far as we are able to determine, and the documents speak for themselves. They are a part of that.

The Court: They will be admitted.

Mr. Outcalt: I object, your Honor, and I would like to be heard on it.

The Court: Very well.

Mr. Outcalt: In the first place, I would renew what I said previously about this being an illegal search warrant. In the second place, we have such things

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here as a Holy Bible. Now, I can't possibly see how you can admit into evidence a Holy Bible as being something that's seized in a search. I would hope that every—

The Court: Mr. Outcalt—

Mr. Outcalt: —man, woman and child in the United States has one.

The Court: The only thing, I can recall that pictures were exhibited, permitted to be exhibited by the Court. I can remember specifically there was a Holy Bible lying on the—wasn't it on a desk, sort of a desk—at the time Mr. Brandenburg's voice was heard—which certain statements were made.

I think it should all go to the jury or none go to the jury. That is all part of the picture there.

Mr. Outcalt: Well, we have another thing here that's among these Exhibits, and this apparently is a book of names and addresses. It says, "AMERICAN PEOPLE. NAAWP. BRANDENBURG." All right, it says that. But then it has got such things in here, your Honor, if the Court please, it's got "DAD 2/18/1888. MOM 3/27/1882." I presume these were the birth dates of this man's parents.

It has "Cincinnati Open Forum, Box Number 8952, Cincinnati, Ohio 45208."

The Court: Anything that relates to this particular organization, KKK organization, and was

—77—

found in the possession of the defendant Branden-

burg— However, it must relate to the organization which was pictured on this movie film. I don't have time now to go through every item, I think you two gentlemen can get together on that during a recess and take from these Exhibits you have offered those items which do not directly relate to this organization.

Mr. Outcalt: I submit this thing right here right now doesn't have one thing to do with it. It's an address book. Is it a crime to possess an address book?

Mr. Nikolin: If your Honor please, if I may be heard—

The Court: What is NAAWP?

Mr. Outcalt: It's National Association for the Advancement of White People. An organization that was run by a fellow by the name of Bill Miller.

Mr. Nikolin: Now, your Honor, if we are going to have this sort of thing, I think the jury should be excused at this point.

The Court: Oh, no, the jury can—anything that isn't evidence, ladies and gentlemen, you are to disregard.

Now, if this is not admitted into evidence, you are to disregard it totally, entirely from your consideration. Only things that the Court admits. Conversation between Court and counsel are not evidence.

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You are to disregard that, pay no attention to it.

Mr. Outcalt: Have these been admitted?

The Court: Unless there is some connection between the NAAWP and the KKK organization, I'm going to sustain the objection to this.

Mr. Nikolin: Well, I think possibly we can tie it up a little later, your Honor.

The Court: That is up to you—subject to being tied up. Anything else that doesn't relate to the KKK?

Mr. Outcalt: Here is a receipt book, your Honor. It doesn't have a thing to do with the KKK.

Mr. Nikolin: Now, I think, Mr. Outcalt knows better than that.

Mr. Outcalt: Mr. Outcalt doesn't know anything but Mr. Outcalt never saw those things until this morning, and you know it.

The Court: Well, unless there is some connection between this and the KKK, I will sustain the objection to anything where there is no connection between the Exhibit offered and the KKK. But if there is direct connection between them, I will admit it. All right, you can decide that later at noon, noon recess. Let's pass this by at this time.

And I am admitting them all, subject to those items being stricken that have no connection between the KKK—

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Mr. Outcalt: Here we have one Goldwater Rally. I hope that is not connected with the Klan. Note my exception to the admission of any of these.

The Court: I just got through telling you, it's admitted subject to your right to eliminate those items that are not connected with the KKK.

(Subject to the Court's ruling, State's Exhibits for identification were received into evidence.)

The Court: Ladies and gentlemen, there will be a short recess, however, you ladies and gentlemen can

sit right where you are. This has nothing to do with the case on trial. This is another matter that the Court had to render a quick decision on.

(Short recess taken.)

The Court: All right, proceed.

Further Direct Examination by Mr. Nikolin:

Q. Captain Hollis, directing your attention to a segment of the item marked for identification number 13, and directing your attention to a small item located therein, small book marked, "AMERICAN PEOPLE, BRANDENBURG, NAAWP," I think, did you have occasion to examine that document, Captain Hollis? A. Yes, we scanned these things as we picked them up in his place of business.

Q. Now, did you make any comparison with the writing

—80—

of names within that particular document with any other list contained in item marked for identification number 14? A. Yes.

Q. Did you find any duplication or any similarity or comparison?

Mr. Outcalt: I object, your Honor.

The Court: Yes, what is the purpose of this, Mr. Prosecutor?

Mr. Nikolin: Well, I think they said, your Honor, that there wasn't any connection, and we are trying to develop that now, your Honor, with this.

The Court: What is the other item—comparing it with?

Mr. Nikolin: Let me ask it this way.

Q. Did you find an item within number 14 there, as a list of Ku Klux Klan members?

Mr. Outcalt: I object, your Honor. It's a leading question.

The Court: Yes, that is leading.

Q. What kind of list did you find within item marked 14, Captain Hollis? A. We found lists indicating listing of other members of the Ku Klux Klan.

Q. Now, did you compare that list with the small book that you are holding in your hand, sir? A. Yes, sir. We

—81—

determined that names in this book here were also found in items of this group here.

Mr. Outcalt: Object.

The Court: Overruled.

Mr. Nikolin: You may cross-examine.

Cross Examination by Mr. Outcalt:

Q. Did Mr. Brandenburg have a telephone book out there at his place? A. I don't recall actually seeing the telephone book.

Q. If he did have a telephone book it would have names similar to some of those names in it, wouldn't it?

Mr. Nikolin: Objection.

The Court: Yes, unless he saw a telephone book. I imagine he wouldn't be able to answer the question. You didn't see any telephone book, as I understand it? Mr. Witness?

The Witness: Sir?

The Court: You didn't see any telephone book?

The Witness: No, I don't recall seeing a telephone book.

The Court: Very well.

Q. That one you have got right there in your hand, who are those—what's on those stubs that are so important?

Mr. Nikolin: Now, your Honor, I have to object to

—82—

his last few words there, that are so important.

The Court: Ask him; he can answer. Let him answer.

A. What I found in this book here was names that were also on the list of the Ku Klux Klan member list that were found in this group of papers here.

Q. Now, Captain, you have in front of you a pistol, a revolver or whatever you want to designate it. You say that was voluntarily produced by Mr. Brandenburg? A. Well—

Mr. Nikolin: Your Honor, he didn't say it was voluntarily. They asked him if there were any other weapons and he showed them where it was.

The Court: Mr. Prosecutor, he has a right to cross-examine. Proceed with your cross-examination.

A. Will you repeat the question, please?

Mr. Outcalt: Repeat it.

(Question read by the Reporter.)

A. I wouldn't say that it was voluntarily produced, I would say that we asked if there were any other weapons.

Had we not of asked that question, perhaps we would never have found the other weapon without a thorough, complete search.

Q. Is that particular weapon—did that show up anywhere on Channel 5's television program? A. I don't recall seeing it.

Mr. Outcalt: Your Honor, I would ask that that be

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withdrawn, that particular pistol. There is no law against having a pistol. He said he can't connect it with the movie or anything else.

Mr. Nikolin: Now, your Honor, of course, I say to you that his premise is wrong. Just because it may not have been in a movie wouldn't make it inadmissible. These were the items that were found.

The Court: Well, there is no testimony concerning any revolver held at the meeting— What was the name of the road?

Mr. Outcalt: Two Mile Road.

The Court: —on Two Mile Road in that house.

Mr. Nikolin: If you will recall the testimony of Mr. Leonard, he said that people were armed with shotguns, rifles, pistols, revolvers, that sort of thing.

The Court: Was there testimony to that effect? I don't recall it.

Mr. Outcalt: I think he said they were armed. Whether he said with pistols, I don't know. I can't make a definite statement.

The Court: Mr. Prosecutor, do you remember whether the pistol—

Mr. Nikolin: I can so say, and the record will so show.

The Court: You can renew your motion during the

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recess and we'll look it up and see if we can find it.

Q. Captain, there is a couple of guns here. A. Yes, sir.

Q. Do you know what type of guns these are, manufacturer's designation, anything about them? A. One is a shotgun, the other is a rifle. I looked at them at the time, I didn't scrutinize them to any detail.

Q. Do you know the make? A. No, sir.

Q. Have you ever seen guns like this any place else? A. Oh, yes, I have saw—

Q. What caliber is this particular weapon I have in my hand? A. That's a .22, sir.

Q. There is nothing particular about this gun that you would, could identify, is there? A. Just that the make, of the wood grain, and so forth, of the gun I recognize it as the gun that was taken at the time. I didn't mark the gun.

Q. Is this any unusual weapon, one of a kind, there's only been one manufactured like it, or anything like that?

Mr. Nikolin: Objection, your Honor. Calls for a conclusion on his part.

The Court: Oh, he may answer.

A. I would say no, there is nothing unusual, it's a .22 rifle.

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Q. What about the shotgun? What—I believe you call those gauge, don't you? What gauge is that? A. 20 gauge shotgun.

Q. Is this a particularly unusual weapon? A. No.

Q. What about the case; is there anything unusual about the case? A. The only thing unusual about the case was that that shotgun was in the case and it was loaded, which was unusual to store a shotgun in a case and have the

shotgun loaded, which we were very surprised to find at the time.

Q. These papers—I'll call your attention particularly to this thing, Goldwater Rally. Is this a particularly unusual document? A. I would say so, yes, sir.

Q. You can explain why. A. Well, inasmuch as it announces a meeting of a Goldwater Rally on August the 9th, that—at 5:00 p.m., and in it it states that members of the different right wing groups will take part including a cross burning by Ku Klux Klan, Klansmen in robes will sign up new members. White men attend across street from Valley TV, 618 Arling—Mill Street in Arlington Heights.

Q. Was there such a rally across—Goldwater Rally and

a cross burning in Arlington Heights? A. Not that I recall on this particular date. I think it was called off because of the arrest of Mr. Brandenburg on the 6th.

Q. Mr. Brandenburg got out on bond on the 6th, too, didn't he?

Mr. Nikolin: Objection, your Honor. Now, how would he know that?

The Court: What's the difference? They let him out on bond. He may answer.

A. I don't know whether Mr. Brandenburg was out on bond on the 6th or not.

Q. Well, you recall an incident that happened on the evening of the 6th in front of his TV shop, don't you? A. Yes, sir.

Q. Or was it the 7th? A. I recall the incident that happened. Whether or not it was that same date or not, I don't remember.

Q. And Mr. Hanna was out there with him, and you arrested Mr. Hanna? A. I did not know—

Mr. Nikolin: Wait a minute. Now, your Honor, there is an objection. There is no—

The Court: Objection will be overruled.

Mr. Nikolin: —connection of any kind.

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The Court: Objection sustained.

Q. Now, that blue book in front of you, that is a book about the Ku Klux Klan, is it not? A. Yes, sir.

Q. Did you, as a police officer, regard this as a crime to possess that book?

Mr. Nikolin: Objection, your Honor.

The Court: Objection will be sustained.

Q. How do you identify those bullets and shells as the same bullets and shells that you found in the weapons? A. Well, this ammunition was removed from the weapons and it was in the possession of the Cincinnati officers since that time.

Q. Did you mark it in any way? A. I did not mark it, no.

Q. So far as you know, you can't tell that those were the same exact bullets or ammunition, could you? A. No.

Q. The Bible that says it's a Gideons Bible, can you—is there any way you can identify that as being a particular Bible that you picked up on the night or afternoon of August the 6th? A. I know that it was a Gideons Bible, and that it was a Gideons Bible that was on display in the film.

Q. Now, you have previously seen this Exhibit number 12,

—88—

have you not? A. Yes, sir.

Q. And, I'll ask you if this doesn't say, "Affiant has seen Clarence Brandenburg enter the property—"

Mr. Nikolin: Now, your Honor, there is an objection before—and he has it all mishmashed, I don't know what he is doing. He is reading from something that is not in evidence. It has no relationship at this point.

Mr. Outcalt: It's marked for identification.

Mr. Nikolin: It's evidentiary wrong.

The Court: What is that?

Mr. Outcalt: A search warrant marked for identification.

The Court: You may read from it.

Q. "Affiant has seen Clarence Brandenburg enter the property, that he operates a business there, and affiant has information from reliable citizens who attended the place where the advocating of violence took place."

Is that the search warrant you went under? A. I did not sign this search warrant. Carl Leicht signed the search warrant, and this is the search warrant that we went in to serve the place with.

Q. Do you know who the reliable citizens mentioned in that are?

Mr. Nikolin: Objection, your Honor. That would

be a conclusion on his part.

The Court: I think the objection will be sustained.

Q. Did you ask who the reliable citizens were when you went in and searched these premises?

Mr. Nikolin: Your Honor, now, I don't know what we are doing. Certainly, he has no duty to ask anybody else, he is armed with a search warrant, issued by proper authority. Now, he doesn't have to ask

anybody; whether or not he did wouldn't make any difference.

The Court: I don't think this Court will feel it's necessary to disclose who the people were who gave them, gave the officers information, especially in a case where the officer himself previously testified he saw these things, certain things going on, as a result of a motion picture that was exhibited on the night of June the 28th, publicly displayed to all of the public on a TV program. He himself saw that. Together with additional information he seemingly obtained elsewhere. I don't think it's necessary to tell the people who gave them the information. Objection sustained.

Q. Now, this address book that was an Exhibit. There is the name of Bill Flax in there. Do you know who Bill Flax is? A. No, I don't know Bill Flax.

Q. Is Bill— You don't know whether Bill Flax is an attorney practicing in Cincinnati or not?

—90—

Mr. Nikolin: Your Honor, he already said he didn't know who Bill Flax was. Now, why go through this? He knows better than this. I am objecting to that.

Q. Is Bill Flax's name on any of those other lists? A. I don't recall whether his name is on the other list or not. I would have to see the list.

Q. Is Cincinnati Open Forum on those other lists? A. I don't recall it being on the other list.

Q. Are Dad and Mom on those other lists? A. Not that I recall.

Q. There is no entry on the other list, "DAD 2/18/1888,

MOM 3/27/1882?" Those aren't anywhere else, are they? A. Not that I know of.

Q. Do you recall if there are doctors' names in this list? A. Not designated as doctors. I don't know whether it names doctors or not.

Q. What about— A. I would have to have the other list in comparison. Might I explain? That in going through that book there, names came up that would be in connection with furthering the investigation of this Ku Klux Klan activities. That is why we connected that with these other items, and that is why it is a part of the whole basic issue here.

Q. Card number Credit Bureau 9418, is that of any par-

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ticular significance to you? A. No, sir.

Q. There are certain newspaper clippings in there, too, is that correct? A. Am I what?

Q. Newspaper clippings in there? A. Yes.

Mr. Outcalt: That's all.

Mr. Nikolin: Thank you, Captain.

(Witness left the stand.)

Mr. Nikolin: Mark these.

(Two photographs were marked State's Exhibits 20 and 21 for identification.)

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(Deposition of JAMES R. VENABLE, Esq., Member, Knights of the Ku Klux Klan; Imperial Wizard or President, National Knights of the Ku Klux Klan of America; Temporary Chairman of the National Knights of Ku Klux Klan Association of America.)

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Q. And, would you tell, sir, the Court and Jury in this case for which your deposition is being taken, what are the basic purposes, objectives of the Ku Klux Klan?"

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Mr. Nikolin: Objection.
The Court: Overruled.

By Mr. Outcalt:

"A. Well, as I stated before, it is a secret fraternal patriotic organization. The Klan of 1915, our purpose was to try to unite christian white people together to use at the ballot box to vote for peopole who were conservatives, people who they felt would make the best officers of our country and our cities, states and counties. The Klan fought to keep aliens from being imported in this country. For many, many years we felt that we should not be a dumping ground for these aliens that come from foreign countries because they would break down ideas, and especially students from other countries, and we felt that they should not be naturalized and in three years be permitted to vote because we had to live here for twenty-one years before we was able to vote, up until some of the States put it down to eighteen years old. We felt that—we are always taught white supremacy, that we feel and we have advocated that the white man or white woman is superior to the negro race, and we felt we should never be dominated by the negro race, we are opposed to intermarriage of the races, that is the negro with the white."

Mr. Nikolin: Objection, Your Honor. Motion—
The Court: Overruled.

By Mr. Outcalt:

"Q. Mr. Venable, in the accomplishment of these purposes and aims of this organization, I will ask you how the

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National Knights of the Ku Klux Klan and the Klan groups of which you were familiar, intended to achieve these objectives?"

Mr. Nikolin: Objection.
The Court: Overruled.

By Mr. Outcalt:

"A. By trying to unite the white people and get them to use the ballot box and the boycott. I have advocated for many years that our sole salvation would be based solely on the ballot box to unify the people, christian white people together there, that we could keep our country safe from communism and socialism.

Q. Does the National Knights of the Ku Klux Klan or any of the groups that you have been affiliated with advocate achieving any of these means by violence?"

Mr. Nikolin: Objection.
The Court: Overruled.

By Mr. Outcalt:

"A. We do not tolerate that. That is, when I say that, the Imperial officers or officers in the States, even in the Klaverns, violence gets all of us in trouble, and if we want to accomplish anything, we can't afford to violate the law. I have told all of our Klan groups as well as those belonging to the National Association that we couldn't use any

type of violence, we had to obey the laws, whether it was good or bad. if we could unify, use the ballot box, we could accomplish this race war as you might call it.

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"Q. Now, when was the next time that there was, shall we say, a rebirth of the Klan in this country?"

Mr. Nikolin: Objection again.

The Court: I don't think we are interested—

Mr. Outcalt: Your Honor, this is 1915. His answer deals with 1915 when he was affiliated—

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Mr. Nikolin: "Mr. Venable, isn't it true that at every"—I ought to say Question there. "Mr. Venable, isn't it true that at every Klan meeting, that the citizens, as you call them, or members of the Klan—

A. Yes.

Q. —wear white robes and masks in order to disguise their identity, is that not true, sir? A. We did before they passed the law, you know. We do now in States where they permit it, but all of the States, even Georgia where the Klan was reborn, they have abandoned or abolished—making it illegal to have a mask on except private property or in a Klavern, not out on public property, it is a crime to do so. Most other States are the same.

Q. In 1964, on the 28th day of June, if a Klan rally was held on private property, the custom or the manner in con-

ducting that rally or meeting, whatever you might say, of the Klavern or Klan, would be customarily in white robes and masks, is that not true? A. It depends on what State, you know, some States will permit you to wear a robe and a hood or mask as you call it, without a mask over your face. Some will permit you to have a mask on if it is on property where you have a lease or rented it, or what we call private property, if you have a contract, either verbal

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or written.

Q. You don't know what the law in Ohio was on the 28th of June of 1962? A. No, I don't know. I mean, I believed they passed a statute in 1965—I mean, even on private property.

Q. So that prior to 1965, and specifically during 1964, even in Ohio— A. Yes, your law was practically the same as Georgia then, up until your new statute which prohibited it.

Q. So, the Klan prior to the passage in Ohio would conduct its meetings by the members of that Klan by wearing hoods, white hoods to disguise their identity, and white robes, is that not right, sir? A. That is right. Of course, I never have been too much in favor of wearing any mask or hood. I wear my robe, but if I put on a hood, I never have a mask over my face.

Q. But, that was the Klan custom, was it not, sir? A: Yes.

I have no further questions."

(Mr. Nikolin left the stand. Mr. Outcalt resumed the stand and read the deposition further as follows:)

"Redirect Examination by Mr. Outcalt:

Q. I would like to ask a couple on redirect Mr. Venable. Do you, as Imperial Wizard of the National Knights of the Ku Klux Klan know when and where meetings are con-

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ducted of that organization? A. If it was what we call an outside rally in any State, those officers are supposed to get permission, notify me that they are having a rally at a certain date and time, and they are supposed to get a contract in writing from the owner of that property, renting it or leasing it for that occasion.

Q. As Imperial Wizard, did you know of any meeting that was conducted in the City of Cincinnati on the 28th of June, 1964? A. No, I didn't have knowledge of that until that meeting was over, and I learned through communication, phone communication there had been some meeting there, and maybe some violations of some laws there. I learned it some several days after that, after an arrest was made of, I believe, Mr. Brandenburg.

Q. And, then, this meeting was not authorized by you prior to its being conducted? A. No, sir. As a rule, where a meeting is held in a State, we authorize somebody to conduct it, that is, be master of ceremonies, or we usually have some representative of the Imperial Staff, you know, either some member of it or some other outstanding Klansman, some officer of the Klan, to go there, maybe speak, try to preside over the meeting.

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(Deposition of WILLIAM HUGH MORRIS, Emperor, Knights of Ku Klux Klan.)

"Q. Would you describe what some of those are?"

These are aims and objectives.

"A. We are opposed to the encroachment of the Federal Government into the affairs purely—purely State and local affairs, because we believe that our freedom depends upon local self preservation. We are opposed to Communism, because it is Godless philosophy. We teach and inculpate into our members the doctrine and belief in white supremacy. We believe that this nation was founded by white men, and it never was in the contemplation of the founding fathers that the negroes would have any voice in this nation. And, history has told us that wherever they have been, they have left their blight. And, it is our purpose that they should not have equality with us or to men or dominion over us. We teach that because we believe it.

Q. Now, these things that are going on in the country which your organization has objection, do you intend—How do you intend to combat these things that you don't approve of?"

Mr. Nikolin: Objection.

The Court: Sustained.

Mr. Outcalt: Well, your Honor, I believe that this is talking about—

The Court: Why are you going into the history of the thing again? We have had enough history of it, and now we are concerned with what happened in this

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particular case and what happened at this particular meeting, and what, what was the purpose of this meeting there and—

Mr. Outcalt: Then Page 22, Question 16.

"Q. Does your organization believe in or condone violence to accomplish these means?"

Mr. Nikolin: Objection to that, your Honor.

The Court: He may answer.

By Mr. Outcalt:

"A. No, sir."

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"Q. What is the purpose or significance of the burning or lighting of a cross?"

Mr. Nikolin: Objection, your Honor.

The Court: Well, inasmuch as there was a cross burnt in this case, we'll permit the answer.

By Mr. Outcalt:

"A. It has a spiritual meaning to all Klan members, in the language of the ritualism, symbolism. In the language of the ritualism, the cross plays a very significant part in all Klan ritual. Now, we are reminded that the cross upon which our Saviour died, which is the criterion of character of every Klansman, prior to the crucification of Christ. The cross was an emblem of degradation and shame, and we are reminded that were it not for the shed of blood of Jesus Christ on that cross, our own lives would be full of degradation and shame. Now, the fiery cross has a tremendous spiritual significance to us, also, because we are

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reminded that Jesus Christ said, 'I am the Light of the World.' He also said, and then we are reminded that God

placed the flaming sword, guarded the entrance to the Garden of Eden with a flaming sword and he guided the Children of Israel on their journey to the Promised Land by piller of fire by night and piller of cloud by day. So, when we add fire to the cross, we simply are proclaiming to the world our fiery zeal. Fire is the greatest purifier yet known to man. So, we symbolically stand before the world in that manner.

Q. Does it— Excuse me, sir. Are you finished? A. So, then, as we stand in that manner, then we—that is fairly symbolic of our seal with the world, the whole world, on record of the purity of our purpose, because as fire purifies, the redeeming of the blood of Jesus Christ was shed on that cross, it is anything but sacrilegious to us to burn a cross."

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. . . . . .

Q. Would you care to describe it? A. Because it is far more precious to mankind than all of the oils of the Ancients of India, and our life purpose is supposed to be as useful to humanity as water is to mankind. It has a very beautiful lesson.

I think that is all. You may cross-examine."

(Mr. Outcalt left the stand. Mr. Nikolin resumed the stand to read the deposition further as follows:)

By Mr. Nikolin:

"Q. Mr. Morris, the wearing of the mask at the various Klan functions is for the purpose of disguising the individual, is that not right, disguising the identity? A. Yes, in a material sense, yes, it could be construed as a disguise, certainly.

Q. Well, that is the purpose, is it not, that is the purpose of wearing the mask? A. Not altogether. It is worn actually as a memorial, and of course, that has this meaning to, they are all alike and a man that is not in the Klan is not judged by the fiber of his garment or his station in life, we are all as one, and that makes us all look just exactly alike.

I will interpose an objection to the answer as not being

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responsive to the question."

The Court: Go ahead, proceed.

By Mr. Nikolin:

"Q. Mr. Morris, the wearing of the mask at Klan functions, this does in fact disguise the individual, you can't see his identity. A. Hides the man's identity.

Q. That is right. A. Yes, sir, it does.

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Testimony of EUGENE NEUBER, TV Station WKRC photographer.

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Cross Examination by Mr. Nikolin:

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Q. Mr. Neuber, I think this car that met you to direct you where to go, with several individuals, they were wearing white hoods, is that not right, sir? A. That's correct. There was visible from—there was a, one or two persons in the back seat which we could see that did have a hood on, or a mask.

Q. And, Mr. Neuber, when you were informed as to where you were going, or being assigned, you were told that this was a secret meeting of the Ku Klux Klan, isn't that correct? A. That's correct.

Q. And you were forewarned that you should or ought to be armed in some manner, isn't that correct?

Mr. Outcalt: I object.

The Court: Yes, any statement somebody else made—I didn't hear it—but any statement in the absence of the defendant—

Mr. Nikolin: Well, it's the same area in which he went, your Honor.

Q. Well, why did you have the guns, sir, let me ask you. Why did you and Al Leonard— A. I believe at the time we were informed by Mr. McPherson to—

Mr. Outcalt: I object.

The Court: Yes, any conversations in the absence of the defendant.

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Q. What was your purpose in having guns, let me ask you that way. A. Self protection, sir.

Q. Because you were going to this kind of a meeting, is that the answer? A. We were going into a place we felt that we were unaware of what it was, we had no idea what it was at the time. We were told it was to be a secret, closed meeting. And, we went in there with self protection on our, or near our self.

Q. Now, Mr. Neuber, when you arrived at this particular place and got into the meeting room, there were a number of individuals there who had both rifles, shotguns and

revolvers and pistols, isn't that correct, sir? A. I believe that is so, sir.

Q. And, as a matter of fact, when you got into this place, you were frightened yourself, weren't you, sir? A. We were a little bit on edge, due to the fact, like I stated before, we didn't know what it was or what was going to actually take place.

Q. Well, this caused you some concern, did it not?

Mr. Outcalt: I object.

Q. Some idea of fear, fright?

The Court: He has a right to cross-examine.

A. After we arrived there, I, I think, within a few moments the fear was over, as far as I am concerned.

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Q. You felt at that point that you weren't going to be harmed? A. That's correct.

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(Closing arguments by counsel.)

The Court: Ladies and Gentlemen of the Jury: It is the duty of the Court to instruct you on the law in this case. Your oath requires you to accept the law as it is given by the Court, and to apply that law in your deliberations. You are not permitted to change the law, nor to apply your own conception of what you think the law should be.

The law presumes the defendant is innocent. This presumption remains with the defendant until it is overcome by proof beyond a reasonable doubt. Thus the defendant

is presumed innocent and must be acquitted unless the State produces evidence which convinces you beyond a reasonable doubt of each and every essential element of the crime charged in the indictment.

Reasonable doubt is defined as follows: It is not a mere possible doubt, because everything relating to human affairs or depending upon moral evidence is open to some

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possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves your minds in the condition that you cannot say you feel an abiding conviction to a moral certainty of the truth of the charge.

The evidence in this case consists of the testimony received from the witnesses and the exhibits that have been offered in evidence. The evidence does not include the indictment, opening statements and closing arguments of counsel, and answers and statements that you were instructed to disregard.

The fact that an indictment was returned is not evidence. The indictment is the instrument used to inform a person accused of crime. You are not to consider the indictment, nor the fact that it was returned, as evidence for any purpose.

You must not speculate as to why the Court sustained the objection to any question, or what the answer to such question might have been. You must not draw any inference or speculate on the truth of any suggestion included in such a question which was not answered.

As I previously stated, the opening statements and the closing arguments of counsel are designed to assist you. They are not evidence.

To weigh the evidence you must consider the credibility of the witnesses. You will apply the tests of truthfulness which you are accustomed to apply in your daily lives.

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You may consider the appearance of the witness upon the stand; the manner of testifying; the reasonableness of the testimony; the opportunity the witness had to see or hear; accuracy of memory; frankness or lack of it; intelligence, interest and bias, if any; together with all the facts and circumstances surrounding the testimony.

You are the sole judges of the facts, the credibility of the witnesses and the weight of the evidence.

You may believe or disbelieve all or any part of the testimony of any witness. It is your province to determine what testimony is worthy of belief and what testimony is not worthy of belief according to the weight you assign to the testimony of each witness.

Some testimony was presented by way of deposition which were read to you. This evidence is to be considered in the same light, and is subject to the same tests that are applied to other witnesses.

You have your instructions on the evidence and the burden of proof. The Court will outline the specific issues.

The indictment accuses the defendant of Advocating Criminal Syndicalism. The indictment reads as follows:

> Court of Common Pleas, Hamilton County. During the term of July in the year 1964. Hamilton County. The Grand Jurors of the County of Hamilton, in the name and by the authority of the State of Ohio, upon
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>
> their oaths present that Clarence Brandenburg, on or about the 28th day of June, in the year 1964, at the County of Hamilton, State of Ohio, aforesaid, did un-

lawfully by word of mouth, advocate the necessity or propriety of crime, violence, or unlawful methods of terrorism as a means of accomplishing political reform, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

Second Count. And the Grand Jurors of the County of Hamilton, in the name and by the authority of the State of Ohio, upon their oaths do further present that Clarence Brandenburg, on or about the 28th day of June, in the year 1964, at the County of Hamilton, and State of Ohio, aforesaid, did unlawfully, voluntarily, assemble with a group or assemblage of persons formed to advocate the doctrines of criminal syndicalism, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

Signed Raymond E. Shannon, Prosecuting Attorney; endorsed by the then foreman of the Grand Jury, James E. Raymond. Reported and filed on the 25th day of September, 1964 in this Court.

The Court brings to your attention the matter of circumstantial evidence. Circumstantial evidence is proof of certain facts and circumstances from which you may rea-

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sonably infer other related or connected facts which naturally and logically follow, according to the common experience of mankind.

You may not make one inference upon another inference but you may draw more than one inference from the same facts of circumstances.

Where conflicting inferences may be drawn from the same facts and circumstances, the defendant is entitled to the inference that is more consistent with his innocence.

Either direct or circumstantial evidence on each and every essential element of the crime is sufficient to warrant a finding of guilty if it satisfies you beyond a reasonable doubt. However, circumstantial evidence alone, on any one or on all essential elements of the crime does not justify a finding of guilty unless the circumstances are entirely consistent with the defendant's guilt and they are wholly inconsistent with any theory of the defendant's innocence and the circumstantial evidence is so convincing as to exclude all reasonable doubt of the defendant's guilt.

The Grand Jury Indictment, ladies and gentlemen, is the formal, legal charge that has been placed against this defendant. You will note that the indictment I have just read to you contains two counts—designated First Count and Second Count. The Court instructs you that each count in this indictment is to be considered by you as a separate charge, and you are to find the defendant guilty

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or not guilty in respect to each count in the indictment.

To this indictment the defendant entered a plea of not guilty as to each count. Such a plea is a denial of every fact in each count in the indictment, and puts in issue all the essential elements of the crime or crimes charged.

The State accuses the defendant of Advocating Criminal Syndicalism. Criminal Syndicalism is defined in the Ohio Revised Code, Section 2923.12 as follows:

> Criminal Syndicalism is the doctrine which advocates crime, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform.

Section 2923.13 Ohio Revised Code is the section of Ohio law under which the defendant herein is charged, and this

section is as follows: And I will read to you only so much of the code section as is applicable to this case.

> No person shall by word of mouth, advocate the duty, necessity, or propriety of crime, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform.
>
> No person shall organize or help to organize or become a member of, or voluntarily assemble with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism.

Before you can find the defendant guilty in respect to the First Count in the indictment, you must find beyond a

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reasonable doubt the existence of the following elements:

> 1. That the defendant did, by word of mouth, advocate the duty, necessity, or propriety of crime, violence, or unlawful methods of terrorism as a means of accomplishing political reform.
>
> 2. That said act, if any, occurred in Hamilton County, State of Ohio, on or about June 28, 1964.

The Court will now explain the meaning of some of the terminology contained in these elements of the First Count in this indictment.

> To advocate means to speak in favor of; defend by argument; to support, vindicate, or recommend publicly.
>
> Unlawful method of terrorism is the use of terror and violence to intimidate, to subjugate, etc., when the methods used to accomplish such intimidation or subjugation are against the law.

Political reform as used in Ohio law refers to remodeling or changing the policy or the administration of government.

Violence is the unjust or unwarranted exercise of force, usually with the accompaniment of vehemence, outrage or fury.

Crime is a violation of, or a neglect to perform, a legal duty of such importance to the protection of society that the state takes notice thereof and imposes

a penalty or punishment for such violation or neglect. In Ohio, no act is a crime unless specifically defined by the legislature and a penalty provided for the violation thereof.

You, ladies and gentlemen of the jury, will consider all of the evidence offered in this case in respect to Count One of the indictment. If you find beyond a reasonable doubt that the defendant did advocate the duty, necessity or propriety of crime or violence or unlawful methods of terrorism—any one of these would be sufficient to establish guilt —as a means of accomplishing political reform, then it will be your duty to find the defendant guilty as charged under the First Count in the indictment.

If you find that the defendant did not advocate the duty, necessity or propriety of crime, violence or unlawful methods of terrorism as a means of accomplishing political reform, then it will be your duty to find the defendant not guilty under the First Count in the indictment.

Coming now to the Second Count in the indictment. Before you can find the defendant guilty in respect to the Second Count in the indictment, you must find beyond a reasonable doubt the existence of the following elements:

1. That the defendant did unlawfully, voluntarily, assemble with a group or assemblage of persons formed to advocate criminal sydicalism.

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2. That said act of defendant, if any, occurred in Hamilton County, State of Ohio, on or about June 28, 1964.

The Court has again used the words "Criminal Syndicalism" in element 1 above, and since this term is not of general usage and understanding, the Court will repeat the definition of "Criminal Syndicalism".

> Criminal Syndicalism is the doctrine which advocates crime, violence; or unlawful methods of terrorism as a means of accomplishing industrial or political reform.

You will consider all the evidence that has been offered in respect to the Second Count in the indictment herein, and if you find beyond a reasonable doubt that the defendant did voluntarily assemble with any group, or assemblage of persons formed to advocate criminal syndicalism, then you will find the defendant guilty under the Second Count in the indictment.

If you do not, then you will find him not guilty, under the Second Count in the indictment.

The Court brings to your attention another section of the Ohio law.

> Whoever aids, abets, or procures another to commit an offense may be prosecuted and punished as if he were the principal offender.

In other words, a conspiracy is defined as a partnership in crime. Legally, it is defined as a combination of two or more persons, by some concerted action, to accomplish some

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criminal or unlawful purpose, or some purpose set in itself criminal or unlawful by criminal and unlawful means.

It is not necessary for the State to show that the parties actually met and agreed to enter a conspiracy. If one concurs, no proof of agreement to concur is necessary. As soon as the union of wills for the unlawful purpose is perfected, the conspiracy is complete. The joint assent of minds may be established as an inference from other facts proved. If one enters a conspiracy he may be guilty of a wrong which he did not specifically intend, if it followed from some other specific or joint unlawful purpose.

When, therefore, persons combine to do an unlawful thing, if the act of one, proceeding according to the common plan, terminates in a criminal result, though not the particular result meant, all are liable. He who enters into a combination or conspiracy to do an unlawful act must be presumed to have understood the consequences which might reasonably be expected to flow from carrying it into effect, and also to have assented to the doing of whatever would reasonably or probably be necessary.

This, ladies and gentlemen, is a criminal case and in a criminal case it requires the concurrence of all twelve of your number before you can arrive at a verdict. The Court has prepared for your convenience four forms of verdict. These verdicts read as follows:

We, the Jury, in the issue joined, find the defendant,

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Clarence Brandenburg, guilty of violating Section

2923.13 Revised Code as he stands charged in the indictment.

And then there is a place, number twelve, a place—one, two, three, so on and so forth, to twelve, which every juror must sign his name, that concurs in that verdict.

Then there is another form of verdict.

We, the Jury, in the issue joined, find the defendant, Clarence Brandenburg—

The first one should have read, "Second Count." This is of the First Count.

—guilty as he stands charged in the First Count of the indictment, and not guilty on the Second Count.

No, that was read properly. And, which, likewise, there is a place for the signature of all twelve of you jurors, whoever concur in that particular form of verdict.

Then there is another form of verdict.

We, the Jury, in the issue joined, find the defendant, Clarence Brandenburg, guilty of violating Section 2923.13 as he stands charged in the Second Count of the indictment and not guilty on the First Count.

And then there is a form of verdict:

We, the Jury, in the issue joined, find the defendant, Clarence Brandenburg, not guilty.

And that form likewise has a place for the signature of all twelve of you ladies and gentlemen in the event

you should return that form of verdict.

When you go to your jury room your first duty will be to select one of your number as foreman or forelady to preside over your deliberations. It may either be a gentleman or lady on the jury.

It is essential to the preservation of the social order that laws be obeyed and violators be convicted. It is equally important that an innocent person should not suffer. Consider all the evidence and make your finding with intelligence and impartiality, and without bias, sympathy, or prejudice, so that the State of Ohio and the defendant will feel that their case was fairly and impartially tried.

The Court will place in your possession the indictment and the verdict forms, and the exhibits. The foreman or forelady will retain possession of these records, including the verdict, and return them to the courtroom. Until your verdict is announced in open court, you are not to disclose to anyone else the status of your deliberations or the nature of your verdict.

Judgment of Court of Appeals of Hamilton County

COURT OF APPEALS OF HAMILTON COUNTY

1968 Term

THE STATE OF OHIO,
HAMILTON COUNTY, *ss.*:

To the Honorable Court of Common Pleas.

GREETING:

Whereas, in a certain action, which was lately heard in our said Court of Appeals wherein the State of Ohio is the Appellee and Clarence Brandenberg is the Appellant the following Judgment was entered on the 16th day of February 1968 viz:

This cause came on for hearing upon the appeal on questions of law, assignments of error, bill of exceptions, the transcript and the original papers and pleadings from the Court of Common Pleas of Hamilton County, Ohio, and was argued by counsel, on consideration whereof, the Court finds there is no error apparent on the record in said proceedings and judgment, prejudicial to Appellant.

It is, therefore, considered by the Court that the judgment of the Court of Common Pleas be, and the same hereby is, affirmed, and that Appellee recover from the Appellant, his costs herein expended, taxed at $.....

.....

And the Court being of the opinion that there was reasonable grounds for this appeal, allow no penalty.

It is further Ordered that a special mandate be sent to the Common Pleas Court of Hamilton County, Ohio, for execution upon this judgment. To all of which Appellant, by his counsel, excepts.

I, ROBERT D. JENNINGS, Clerk of the Court of Appeals of Hamilton County, do hereby certify that the above is a correct copy of the entry made by said Court in said cause as appears by the Journal of said Court, Page .....

WITNESS my hand and the seal of the said Court, at Cincinnati, this 16th day of February A.D., 1968

ROBERT D. JENNINGS, Clerk, Court of Appeals

By LAVERNE H. DUFFY, Deputy

Judgment of Supreme Court of Ohio

The cause, here on appeal as of right from the Court of Appeals for Hamilton County was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substanfial constitutional questional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the Common Pleas Court to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Hamilton County for entry.